

# **Exhibit A-4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

SECURITIES AND EXCHANGE )  
COMMISSION, )  
                        )  
Plaintiff, )  
                        )  
-against- )  
                        )  
ROBERT J. MUELLER, )  
DEEPROOT FUNDS, LLC )  
(a/k/a dprt Funds, )  
LLC), AND POLICY )  
SERVICES, INC., )  
                        )  
Defendants. )  
                        )  
-and- ) CIVIL ACTION NO.  
                        ) 5:21-cv-785-XR  
DEEPROOT TECH LLC, )  
DEEPROOT PINBALL LLC, )  
DEEPROOT STUDIOS LLC, )  
DEEPROOT SPORTS & )  
ENTERTAINMENT LLC, )  
DEEPROOT RE 12621 )  
SILICON DR LLC, AND )  
ROBERT J. MUELLER, )  
JEFFREY L. MUELLER, AND )  
BELINDA G. BREEN, AS )  
CO-TRUSTEES OF THE MB )  
HALE OHANA REVOCABLE )  
TRUST, )  
                        )  
Relief Defendants. )

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REMOTE ORAL AND VIDEOTAPED DEPOSITION OF  
KEN ABRAMSON  
JUNE 15, 2023

\*\*\*\*\*

1           REMOTE ORAL AND VIDEOTAPED DEPOSITION of KEN  
2 ABRAMSON, produced as a witness at the instance of the  
3 Defendants, and duly sworn, was taken in the  
4 above-styled and numbered cause on June 15, 2023, from  
5 9:30 a.m. to 3:55 p.m., before Heather L. Garza, CSR,  
6 RPR, in and for the State of Texas, recorded by  
7 machine shorthand, at the offices of HEATHER L. GARZA,  
8 CSR, RPR, The Woodlands, Texas, pursuant to the  
9 Federal Rules of Civil Procedure and the provisions  
10 stated on the record or attached hereto; signature  
11 having been waived.

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1 Wildman, is that -- were you handling the same sorts  
2 of clients?

3 A. Basically, yes. So the way our firm was  
4 structured, I kind of had my clients, he kind of had  
5 his clients, and we operated under one umbrella, but  
6 we kind of managed the clients separately.

7 Q. What was -- I mean, would you characterize  
8 Policy Services as a small business?

9 A. When it started, yes.

10 Q. When you stopped working with Policy  
11 Services, would you still call it a small business?

12 MS. WARDEN: Objection as to form.

13 A. I would say small to medium.

14 Q. (BY MR. HULINGS) Okay. And what's your  
15 definition of -- how are you evaluating the size in  
16 this context?

17 A. Usually revenues. Revenues or volume of  
18 work, one of the two.

19 Q. Okay. All right. So trying to sum this up,  
20 you've been in the accounting profession since  
21 approximately 1982; is that right?

22 A. Correct. About 30 something years, yes.

23 Q. And you've got a degree in accounting, and  
24 you've passed your -- received your CPA, and you've  
25 taken regular continuing education every year,

1           **correct?**

2           A.     That's correct.

3           Q.     **And you've worked with clients of all kinds**  
4           **over your career; is that right?**

5                   **MS. WARDEN:** Objection; form.

6           A.     That's correct.

7           Q.     **(BY MR. HULINGS) And is it fair to say you**  
8           **developed some expertise in the tax laws; is that**  
9           **fair?**

10          A.     To a degree, yes.

11          Q.     **And -- and some expertise in -- you've**  
12           **developed some expertise in the preparation of**  
13           **financial statements?**

14          A.     I did at one time, yes.

15          Q.     **Okay. And is it fair to say you developed**  
16           **some expertise in the application of accounting**  
17           **principles to how a company maintains its books and**  
18           **records; is that correct?**

19                   **MS. WARDEN:** Objection; vague as to  
20           expertise.

21          Q.     **(BY MR. HULINGS) You can answer.**

22          A.     Yes.

23          Q.     **Do you understand what the term "expertise"**  
24           **means?**

25          A.     Yes.

1           **Q. What's your definition of "expertise," just**  
2           **to clear up the record?**

3           A. I would say it's -- it's knowing the  
4 principles and regulations, the rules effectively, and  
5 applying them to the situation at hand.

6           **Q. Okay. Clean up one thing. So when you split**  
7           **from Wildman in 2016, what was the reason for the**  
8           **split?**

9           A. I was having issues with his maintaining his  
10          licensing.

11          **Q. Explain why that led to splitting the**  
12          **business up.**

13          A. If he's not licensed, he's not supposed to be  
14 holding himself out as a CPA, and he was.

15          **Q. Okay.**

16          A. That puts potential burden on me, and I  
17 didn't want it.

18          **Q. All right. Okay. When did you first meet**  
19          **Russ Hagan?**

20          A. Let's see. 2013 -- I would say somewhere  
21 around 2009/2010.

22          **Q. And how did you meet him?**

23          A. We were introduced by a acquaintance, I guess  
24 you would say, who did corporate incorporations.

25          **Q. So was that an acquaintance an attorney?**

1           **2014 for Policy Services?**

2           A.     I believe I did, but I didn't have it when  
3       the SEC asked for it.

4           Q.     Okay. Let's go through that. We'll go back  
5       to that in a second. Can you describe the process you  
6       go through to -- that -- let me rephrase.

7           **Can you describe the process you went to --  
8       went through to prepare the 2014 tax return for Policy  
9       Services?**

10          A.     Sure. I would have obtained the QuickBooks  
11       file from either Russ, Robert, or Charlotte. I would  
12       have gone through the file to look for anything that  
13       was not considered reasonable under the tax code, and  
14       then I would have prepared the returns. I would have  
15       sent a draft to -- I should have sent it to both  
16       Robert and Russ for review, and then there would have  
17       been -- I would have also sent at that time e-file  
18       authorization forms, and if there were no questions on  
19       the return, the client then signs the authorizations,  
20       send them back to me, and then I file the returns  
21       electronically.

22          Q.     All right. And you mentioned that accounting  
23       records from Policy Services, is that the general  
24       ledger?

25          A.     That would include the general ledger, yes.

1           **Q. What else would be included in that?**

2           A. Well, the QuickBooks file would have the  
3 general ledger. It would have any journal entries  
4 that were made. It would have the -- I guess the cash  
5 receipts and cash disbursements journals. It can  
6 produce financial statements, so it's a complete  
7 accounting software package.

8           **Q. So you -- you got access to the QuickBooks  
9 software?**

10          A. Correct.

11          **Q. So they didn't provide you with paper  
12 versions of the QuickBooks --**

13          A. No. No, no, no.

14          **Q. And when you mentioned you were looking for  
15 anything that was not considered, is it normal or --**

16          A. I would say reasonable.

17          **Q. Reasonable. What would be an example of  
18 something that was not reasonable under accounting  
19 principles?**

20          A. One recollection was when they were opening  
21 their offices, there were improvements made to the  
22 office space that they coded as expenses. Those are  
23 not expensed. Those are capitalized and depreciated  
24 over a period of time.

25          **Q. So you gave them -- so what did you do when**

1       **signed engagement letter returned?**

2           A.     At the start of the engagement, that's  
3     correct.

4       **Q. All right.**

5           A.     I may have gotten it after the fact.

6       **Q. Okay. So Page 2, what is this document?**

7           A.     So because Policy Services is the filing  
8     entity but it owned two of the LLCs, Deeproot Advisory  
9     Services, and Deeproot Funds for tax purposes, they  
10    get combined into one tax return filing, so that is  
11    the combination of those entities activity into the  
12    numbers that were then used on the tax return, and  
13    that's part of that accounting time that you see.

14       **Q. So this is a balance sheet, though?**

15       A.     Correct.

16       **Q. And generally speaking, for people who aren't  
17     in accounting, what's a balance sheet?**

18       A.     A balance sheet is a picture as of a specific  
19     date, in this instance, December 31 of 2014, of the  
20     assets, liabilities, and equity of the company.

21       **Q. How was this particular balance sheet  
22     generated?**

23       A.     Through QuickBooks. Each of those entities  
24     had a separate QuickBooks file that was maintained and  
25     then the balance sheet for each entity was effectively

1 obtained through each QuickBooks file, and then this  
2 Excel file combined those by just moving all the  
3 digits in and then adding across.

4       **Q. Did you create this document?**

5       A. Yes.

6       **Q. You say each entity had its own QuickBooks**  
7       **file. Is it the entities at the columns that say,**  
8       **"Policy Services, DPRT Advisory Services and**  
9       **Consolidated DPRT Funds"?**

10      A. Yes.

11      **Q. What about the entities on the left?**

12      A. So those --

13      **Q. Three-year bonus reset and the others**  
14      **identified in that first column?**

15      A. Yeah. So those would have all had -- yes.  
16      Those would have all had separate files and some of  
17      those are actually part of that consolidated Deeproot  
18      Funds, so there was multi-tiering in the ownership.  
19      Policy Services owned Deeproot Funds, LLC, Deeproot  
20      Funds, LLC owned some of those entities that you see  
21      on the left column.

22      **Q. Did you have to do separate tax returns for**  
23      **those entities owned by Policy Services?**

24      A. No.

25      **Q. Just -- just for the parent entity, correct?**

1 A. Just -- correct.

2 Q. So there's some notes on the right and at the  
3 bottom. Whose notes are those?

4 A. Notes on the right?

5 Q. Handwritten markings on the right and at the  
6 bottom.

7 A. Okay. The right, if you're just referring to  
8 those, that's where I was combining multiple accounts  
9 to show one number on the tax return.

10 Q. So that's your handwriting?

11 A. I'm sorry?

12 Q. So that's your handwriting?

13 A. Yes.

14 Q. That's what I was asking. You made these  
15 notes on --

16 A. Yes.

17 Q. -- the right side of the page? And at the  
18 bottom of the page?

19 A. Yes. Mine, as well.

20 Q. All right. So one of these Ys -- are those  
21 Ys kind of at the top?

22 A. It's actually a -- I guess just a notation  
23 that that number was used on the tax return.

24 Q. So if you go a little further down, there's a  
25 grouping of the entries for, "Due from DR Wealth

1       **Advisors and due from Deeproot Continuation Holdings,"**  
2       **those are grouped for purposes of the tax returns; is**  
3       **that correct?**

4           A.    That is correct.

5           Q.    **And why are those entries grouped for the tax**  
6       **return?**

7           A.    Because those are reported under the Deeproot  
8       Continuation Holdings, Inc., return so that was a  
9       separate entity of which I believe the DR Wealth  
10      Advisors was a sub of Deeproot Continuation Holdings.  
11      So that actually was shown as a receivable on the  
12      Policy Services books.

13          Q.    **Got it. All right. A little further down,**  
14       **there's a grouping that appears to be for investor**  
15       **acquisitions, commissions and fees, and, again,**  
16       **investor acquisitions. Why were those grouped?**

17          A.    Because those are the invest -- that's the  
18       money that came in from the investors, so there was a  
19       total of, \$7,067,000 that was received from investor  
20       funds. The separate accounts investor acquisitions  
21       not ID'd, that 5,000, I didn't know where those came  
22       from, and that was something that at a later date,  
23       Mr. Hagan or Mr. Mueller or Charlotte was supposed to  
24       research and let me know where those came from. The  
25       commissions and fees for the 2,000,003 were the

1 commissions that Policy Services effectively earned on  
2 those policies, but was not able to collect yet or was  
3 not -- yeah, was not able to collect yet -- wait a  
4 minute. I'm sorry. That's an asset. So those were  
5 commissions that were paid out for the acquisition of  
6 those policies, but they were not expensed yet because  
7 we were not recognizing the income on those policies,  
8 so under the accounting matching principle, those  
9 would be expensed when the policy paid off. The 4  
10 million -- looks like it's 4,000,690 can't read the  
11 number too well -- that was the actual money that was  
12 invested into the life insurance policies.

13       **Q. Okay. So the 2,300,000 and change for  
14 commission and fees, to whom was that paid to your  
15 knowledge?**

16       A. Those were paid for various things. So they  
17 were either commissions to outside people for the  
18 purchase of the policy or they were money that was  
19 received from investors that was being earmarked to  
20 pay future life insurance premiums on those policies.

21       **Q. Got it. So did Policy Services around this  
22 time, if they got an investor -- let me rephrase.**

23           **Did Policy Services take an advance on moneys  
24 received from investors?**

25       **MS. WARDEN:** Objection; vague as

1 to "advance."

2 Q. (BY MR. HULINGS) You can answer.

3 A. What do you mean by an advance?

4 Q. So there's -- Policy Services paid for  
5 certain expenses, correct?

6 A. So policy Services, when they got money in  
7 from an investor, a portion of that money would be  
8 used to actually buy the policy. There was also a set  
9 aside for future premiums to keep that policy intact  
10 for the life expectancy of that person. There were  
11 commissions paid to outside, if you want to call them  
12 sales representatives, for finding the policy, and  
13 that's what's in that account.

14 Q. So the money that was paid in -- so Policy  
15 Services paid -- had business expenses, correct?

16 MS. WARDEN: Objection --

17 A. Yes.

18 MS. WARDEN: -- mischaracterizes  
19 testimony.

20 MR. HULINGS: Okay. Let me see how I'm  
21 going to address that.

22 Q. (BY MR. HULINGS) Policy Services paid rent,  
23 correct?

24 A. Yes.

25 Q. Policy Services paid salaries, correct?

1           A. Yes.

2           Q. Where did the money come from to pay, for  
3 example, salaries?

4           A. The money basically came from investments  
5 that Policy Services made, so they were earning  
6 interest on some of their money. Part of it was  
7 probably from some of the set aside that came in from  
8 the investors that was not needed to pay -- to pay the  
9 -- to purchase the premium or purchase the policy or  
10 for the remaining premiums. So there was a -- a  
11 small, if you want to call it, a profit percentage, I  
12 guess, that was used to pay for the day-to-day  
13 operations of the company.

14           Q. And that small profit percentage was taken  
15 out of the money that investors provided to Policy  
16 Services?

17           MS. TULLY: Objection; speculation.

18           A. Part of it was a commission that Policy  
19 Services earned, yes.

20           Q. (BY MR. HULINGS) Okay. All right. So let me  
21 -- this is relatively important to the case, so let's  
22 kind of be specific here. So to your knowledge, when  
23 Policy Services took investor money, did Policy  
24 Services take a commission out of that investor money?

25           A. I believe they did.

1 MS. WARDEN: Objection; vague.

2 Q. (BY MR. HULINGS) You said you believe that  
3 they did?

4 A. Yes.

5 Q. How would that commission be accounted for on  
6 a balance sheet?

7 A. It wouldn't be. It should be on the income  
8 statement.

9 Q. Okay. Would that be revenue to --

10 A. Yes.

11 Q. -- Policy Services?

12 And then the salary paid out would be an  
13 expense?

14 A. That would be correct.

15 Q. So as money comes in, some of the money is  
16 used to -- as money comes in from an investor, some of  
17 the money is used to pay commissions, some of it is  
18 used to pay -- to purchase the life insurance policy,  
19 and some small percentage is revenue to Policy  
20 Services, correct?

21 A. That was my understanding, yes.

22 Q. And was there anything improper to your  
23 knowledge under the accounting rules or the tax laws  
24 about treating a portion of those incoming funds as  
25 revenue to Policy Services?

1                   **MS. WARDEN:** Objection; lack of  
2 foundation; asks for a conclusion.

3                   **MS. TULLY:** Speculation.

4                   **Q. (BY MR. HULINGS) You can answer.**

5                   **A.** No.

6                   **Q. So to your knowledge, based on your**  
7 **experience and training, familiarity with the tax laws**  
8 **and accounting principles, there's nothing improper**  
9 **about treating a portion of the money received from**  
10 **investors as revenue to Policy Services; is that**  
11 **correct?**

12                  **MS. WARDEN:** Same objection.

13                  **MS. TULLY:** Objection; speculation.

14                  **A.** No. If -- if they earned a commission on  
15 each policy that was disclosed, and my understanding  
16 was that was disclosed as part of the sales material,  
17 then that is the correct accounting treatment under  
18 tax law.

19                  **Q. (BY MR. HULINGS) Okay. So on the -- on the**  
20 **left column, you have a series of entries that is due**  
21 **from, for example, DR 3 year growth --**

22                  **A.** Right.

23                  **Q. Due from DR 3 year bonus reset, for example.**  
24 **And so is it your understanding that each of these**  
25 **entities, DR 3 year bonus reset and DR bonus both,**

1       Services was intend -- that is money that Policy  
2       Services was going to transfer but had not transferred  
3       yet, correct?

4                   **MS. WARDEN:** Objection; vague.

5       A. As of that date, that's correct.

6       Q. (BY MR. HULINGS) And you understood the  
7       question?

8       A. Yes.

9       Q. So all of these entries, these draw -- these  
10      entries on this balance sheet, were these drawn from  
11      the QuickBooks entries?

12     A. Yes.

13     Q. So is it fair to say the Policy Services was  
14      tracking the flow of money between the various  
15      entities through QuickBooks?

16     A. Yes.

17                   **MS. WARDEN:** Objection; vague as  
18      to "tracking."

19     Q. (BY MR. HULINGS) So it was keeping records  
20      regarding -- it's fair to say that Policy Services was  
21      keeping records of the various transfers of funds  
22      between the entities identified in this balance sheet,  
23      correct?

24                   **MS. WARDEN:** Same -- same objection.

25     A. As long as they were involved in the

1 transaction, yes.

2 Q. (BY MR. HULINGS) And did each of these  
3 separate entities have their own bank accounts?

4 A. I believe they did.

5 Q. So --

6 A. Should have.

7 Q. So -- excuse me. The bank account records  
8 would provide another way of tracking the movement of  
9 funds between these entities, correct?

10 MS. WARDEN: Objection; foundation.

11 A. Yes, that's correct.

12 Q. (BY MR. HULINGS) And that answer is based on  
13 your familiarity with Policy Services business  
14 records, the bank statements, and your experience as  
15 an accountant; is that fair?

16 A. When we -- when we do the accounting records,  
17 they're basically generated off the activity from the  
18 bank accounts.

19 Q. So -- so you have some firsthand knowledge of  
20 that, there are bank accounts for each of these  
21 separate entities?

22 A. Yes.

23 Q. And you have firsthand knowledge of the  
24 content of those bank accounts, correct?

25 A. I'd have to look at the records, but yes.

1           Q. No. Talking about contract between the  
2 entities. Are you aware of any requirement that  
3 required a formal written contract between the  
4 entities for these funds to be transferred?

5           A. No.

6                         **MS. WARDEN:** Objection.

7           Q. (BY MR. HULINGS) All right. Okay. Let's go  
8 down a little further. You've got fixed assets. Just  
9 briefly, what are these?

10          A. So those are the assets that the company  
11 owned. They're all under Policy Services. I think  
12 most of them are pretty self-explanatory, and the  
13 reason they're grouped is on the tax return, we only  
14 enter one number.

15          Q. We'll go down a little lower under,  
16 "Liabilities and equity." Do you see where we are?

17          A. Yep.

18          Q. It says, "Payable to investors," and Policy  
19 Services, it's approximately 7.8 million. Do you see  
20 that?

21          A. Yes.

22          Q. What is that payable -- how is that number  
23 7.8 million derived?

24          A. That is the amount that was received from the  
25 investors.

1           A. Those, I believe, are the actual policies  
2       that were purchased.

3           Q. And, again, these -- was this document  
4       generated from the QuickBooks record?

5           A. Yes.

6           Q. All right. And under the next page, still  
7       the balance sheet, under, "Liabilities and equity,"  
8       there's something called "SWEEP." What is "SWEEP"?

9           A. SWEEP was a account that, I believe,  
10      Mr. Mueller set up for money going in and out of the  
11      various policies, and those are the policies that were  
12      identified.

13          Q. This was -- the SWEEP account was another --  
14       was this another way for Policy Services to track the  
15       flow of money to and from investors?

16          A. Yes.

17           **MS. WARDEN:** Objection; mischaracterizes  
18       testimony and vague.

19          Q. (BY MR. HULINGS) All right. The next page,  
20       you've got -- it looks like you've got an insurance  
21       policy and some names underneath it. What does that  
22       indicate?

23          A. So that indicates that on that policy, there  
24       were, whatever, 10, 15 investors in that policy.

25          Q. And on Page 10, Bates number at the bottom is

1 computer date of 3/10/2015 will be transmitted," and  
2 then there's the rest of the sentence, and that is  
3 marked through. Why is it marked through?

4 A. Because I cleared the diagnostic.

5 Q. Understood.

6 A. That's just indicating that the computer  
7 system used that date as the filing date.

8 Q. Got it. All right. Let's go to Page 6.

9 What is this page right here?

10 A. Okay. So that is the summary of the tax  
11 return for 2014 and a comparison to the 2013 return.

12 Q. And how is this generated?

13 A. By the software.

14 Q. What kind of software were you using?

15 A. It's called Lacerte.

16 Q. Could you spell that?

17 A. L-A-C-E-R-T-E.

18 Q. Where did these numbers come from?

19 A. Those are -- well, the numbers above the  
20 ordinary business income and loss are all input by me  
21 into the system.

22 Q. Where did you get those numbers to input  
23 them?

24 A. From the prior document that we looked at  
25 where I combined the balance sheet and profit and loss

1 statements.

2 Q. The ultimate source of those are the  
3 QuickBooks records for --

4 A. That is correct.

5 MS. WARDEN: Objection; leading.

6 Sorry, Mr. Abramson, if you don't mind,  
7 just give me, like --

8 THE WITNESS: No problem. Sorry.

9 MS. WARDEN: -- two seconds before  
10 answering.

11 Q. (BY MR. HULINGS) So is the ultimate source of  
12 the information that is reflected in this page the  
13 QuickBooks documents for Policy Services?

14 A. For Policy Services and the related  
15 subsidiaries, yes.

16 Q. Okay. And on Page 8, the document  
17 says, "Shareholder's Basis Computation." Do you see  
18 this?

19 A. Yes.

20 Q. What is "basis"? What is loss of excessive  
21 basis? What does that mean?

22 A. So basis in an S Corporation is the initial  
23 contribution that you purchase your stock with, plus  
24 any subsequent contributions to the company for  
25 capital, plus any profits that the company has, less

1 you already submitted an extension? I want to make  
2 sure." Do you see that?

3 A. Yes.

4 Q. Did you understand this is Mr. Mueller  
5 telling you that even in April, Ms. Acker hadn't  
6 finished completing the QuickBooks?

7 A. Yes.

8 MS. WARDEN: Objection.

9 THE WITNESS: Sorry.

10 Q. (BY MR. HULINGS) So the next paragraph  
11 says, "As for my own taxes, I would like to discuss  
12 the overages." Mr. Mueller says, "My own taxes," do  
13 you understand that to be his personal income tax  
14 returns?

15 A. Yes.

16 Q. The next sentence says, "You said it would be  
17 a loan, but I'd like to 1099 some of that money out,  
18 unless you want to keep it as is. I need to know  
19 whether I'll just file my own taxes as-is without the  
20 K-1's or file an extension." Okay. It says, you said  
21 it would be a loan, so that appears to be referring to  
22 a previous conversation. Is that your understanding?

23 A. I don't know what the overages are.

24 Q. Okay. Do you recall a conversation prior to  
25 this April 4 e-mail in which you discussed

1 can skip that. All right. So the next question  
2 is, "What overages are you referring to? I have not  
3 seen any books in about a year." Is that consistent  
4 with your memory that you hadn't seen the -- are you  
5 -- are you telling Mr. Mueller that you hadn't seen  
6 the QuickBooks for Policy Services since completing  
7 the March -- since March 2015?

8 A. That is correct. So since the 2014 complete  
9 year.

10 Q. All right. So this is -- this kind of gets  
11 to the heart of this. I'm going to read this. "If  
12 you are referring to distributions in excess of basis  
13 within the S-Corp. that would be considered dividends  
14 to you for amounts not adjusted through the loan  
15 account. The dividends have not deductible to the  
16 Corporation but are includable in your individual tax  
17 returns." Okay. So let's walk through that sentence.

18 A. Okay.

19 Q. So if -- if there are distributions -- when  
20 you're saying -- referring to distributions in excess  
21 of basis, what is -- what are you referring to in that  
22 sentence?

23 A. So as we discussed basis before, you must  
24 have basis in a corporation -- in an S Corporation to  
25 be able to take profit distributions. Okay? So

1 distributions and dividends are two completely  
2 separate things. Distributions are distributions of  
3 previously taxed profits that in this case Policy  
4 Services never had. Dividends are dividends similar  
5 to what you receive from purchasing stock in a public  
6 company, and those are taxable to an individual.

7       **Q. And are they taxable as income or capital  
8 gains?**

9       A. They are taxable as dividends if -- let's  
10 see. Did they have qualified dividends back then? I  
11 don't remember when qualified dividends came into  
12 play. If they would qualify as qualified dividends,  
13 which these would have, they would have been taxed at  
14 a 15 percent rate.

15       **Q. So if Mr. Mueller is getting distributions in  
16 excess of basis, that would be considered dividends --  
17 so help me understand. Why would that be considered  
18 dividends to Mr. Mueller?**

19       A. Because he doesn't have basis to distribute a  
20 previously taxed item.

21       **Q. And because it's dividend, it would have to  
22 be --**

23       A. Tax --

24       **Q. -- tax returns; is that right?**

25       A. That would be correct. They would be

1 dividends on his tax return.

2 Q. So the next sentence -- then you say that,  
3 but they are includable in your individual tax  
4 returns, correct?

5 A. Yes.

6 Q. All right. Next sentence says, "As the sole  
7 owner of the corporation, it would be very difficult  
8 to substantiate a reason for you to be paid and  
9 treated as an independent contractor where a 1099  
10 would be issued." Why is that the case, that a sole  
11 owner of a corporation can't receive a 1099?

12 A. Because if you're an employee of the company,  
13 you can't also be an independent contractor under the  
14 Internal Revenue Code.

15 Q. Okay.

16 A. There are some very minor situations where  
17 that may apply, but I didn't feel they did in this  
18 case.

19 Q. And you were -- were you aware at the time of  
20 this e-mail that Policy Services had paid Mr. Mueller  
21 a salary?

22 A. Yes.

23 Q. So he was an employee of Policy Services?

24 A. Yes.

25 MS. WARDEN: Objection; leading.

1           Q.     (BY MR. HULINGS)   And so as an employee of  
2     Policy Services, is it your understanding that  
3     Mr. Mueller could not take a -- could not file a 1099?  
4

5           A.     He shouldn't, yes.  
6

7           Q.     All right. So then in red, Mr. Mueller  
8     says, "The overages we spoke about in January from the  
9     XLSX sheet I sent you. When we talked before you said  
10    loans (if you do not have sufficient basis), from the  
11    corporation, but did not mention dividends." So  
12    Mr. Mueller appears to be referring to a telephone  
13    conversation in January of 2016, correct?  
14

15               MS. WARDEN: Objection; leading.  
16

17           A.     I believe so.  
18

19           Q.     (BY MR. HULINGS) All right. Let me -- let me  
20    -- I think that's a baseless objection, but I'm going  
21    to rephrase the question to avoid a pointless fight.  
22

23               Did you -- is it your understanding -- do you  
24    recall a conversation in January 2016 with Mr. Mueller  
25    that he is referring to in this e-mail?  
26

27           A.     No.  
28

29           Q.     Do you recall receiving a spreadsheet in  
30    January 2016 from Mr. Mueller that will be referred to  
31    as XL SX?  
32

33           A.     I think he means Excel file by that. I don't  
34    recall receiving it, but he is referring to it so I  
35

1 may have.

2       Q. All right. So the next -- so he says, "When  
3 we talked before you said loans if you do not have  
4 sufficient basis from the corporation." What is your  
5 understanding of that phrase?

6       A. Well, in other words, he doesn't have basis  
7 because Policy Services losses have exceeded money he  
8 has put into the company.

9       Q. And so what does that mean -- so if he's  
10 received money from the company in excess of his  
11 salary or in addition to his salary, does that mean  
12 that he can treat that money provided by the company  
13 as a loan from the company to Mr. Mueller?

14           MS. TULLY: Objection; speculation.

15           MS. WARDEN: Same objection.

16       A. If there's intent to have it paid back, then  
17 yes, it can be a loan. If there's no intent for a  
18 repayment, then it should be a dividend.

19       Q. (BY MR. HULINGS) Okay. All right. So he  
20 says, "When we talked before -- and it's a in  
21 different font, loans if you do not have sufficient  
22 basis from the corporation." So does that refresh  
23 your memory that you may have told Mr. Mueller that he  
24 could treat money received from Policy Services in  
25 excess of his paycheck as a loan from the corporation?

1                   **MS. WARDEN:** Objection. He said he  
2 didn't have a conversation with him.

3                   **MR. HULINGS:** That's not what he said.  
4 I'm asking for his memory, and if he doesn't remember,  
5 that's fine.

6                   **Q. (BY MR. HULINGS)** So you can answer the  
7 question, Mr. Abramson.

8                   A. Can you repeat it?

9                   **Q. Yeah. Okay. Mr. Mueller says, "When we**  
10 **talked before." See that?**

11                  A. Yes.

12                  **Q. You testified previously that you didn't**  
13 **remember the conversation; is that right?**

14                  A. Yes. Because I don't know when he's  
15 referring to "talked" if that's telephone or e-mail  
16 but...

17                  **Q. So he -- he appears to have pasted something**  
18 **in a different font that says, "Loans (if you do not**  
19 **have sufficient basis), from the corporation." Do you**  
20 **recall telling Mr. Mueller that he could treat funds**  
21 **received from the corporation in excess of his salary**  
22 **as a loan if he did not have sufficient basis?**

23                  A. I don't recall that, but it appears that I  
24 did.

25                  **Q. Okay. And explain to us again why that would**

1       **be the case? Why would it be acceptable under the tax  
2 laws and the accounting principles for Mr. Mueller to  
3 treat funds received from the corporation in excess of  
4 his salary as a loan from the corporation?**

5           A.     So let's say he was taking funds during the  
6 year periodically. I don't recall if he was taking  
7 salary on a periodic basis or just an annual salary at  
8 year-end. He may have taken salary, assuming that  
9 there would be basis from income or -- or other  
10 sources, that because I hadn't seen the accounting  
11 records, I was unaware of. So if he took too much  
12 out, he could repay it the following year within a few  
13 months, and there's no issue with it from a tax  
14 standpoint. If he is taking additional funds with no  
15 intent to repay those, then they should be classified  
16 as dividends and taxable income.

17          Q.     All right. Okay. Let's go up a little  
18 further. So you've got an e-mail from you April 5th  
19 at 11:12 a.m. Do you see that?

20          A.     Yes.

21          Q.     Appears to be a response to Mr. Mueller's  
22 comments in red, correct?

23          A.     Okay.

24          Q.     All right. So let's walk through this. "In  
25 order to deduct" -- he writes, "In an S-Corporation

1 the concept of basis and equity is as follows: In  
2 order to deduct losses from the entity the shareholder  
3 must have basis to be able to deduct a loss." Do you  
4 see that?

5 A. Yes.

6 Q. And then it says, "Basis is defined as your  
7 stock purchase plus additional equity contributions  
8 plus net income less net losses less distributions."  
9 Do you see that?

10 A. Yes.

11 Q. That's the same definition of basis we just  
12 discussed earlier in your deposition, correct?

13 A. Correct.

14 Q. All right. Then you tell Mr. Mueller, "In  
15 order to be able to take distributions from an  
16 S-Corporation there must be prior or current years  
17 undistributed profits." Do you see that?

18 A. Correct.

19 Q. Okay. Next paragraph, "If distributions are  
20 made in excess of basis then they are treated like  
21 dividends." Do you see that?

22 A. Yes.

23 Q. Meaning that they're -- "The downside to  
24 dividends is that they are considered distributions of  
25 equity and therefore provide no deduction to the

1 corporation."

2 A. Correct.

3 Q. Explain what you meant by, "No deduction to  
4 the corporation."

5 A. Dividends are a distribution of retained  
6 earnings so if a dividend is issued, it reduces the  
7 retained earnings of the corporation. It is not an  
8 expense that reduces income.

9 Q. So if it was paid in salary, that would be  
10 deductible as an expense, correct?

11 A. That is correct.

12 MS. WARDEN: Objection; leading.

13 Q. (BY MR. HULINGS) Let me -- if -- if a payment  
14 to Mr. Mueller was treated as salary, that would --  
15 would that be deductible as an expense to the  
16 corporation?

17 A. Yes.

18 Q. All right. The next sentence says, "They are  
19 taxable to the shareholders and may be qualified  
20 dividends if the stock is owned for at least six  
21 months." Do you see that?

22 A. Yes.

23 Q. When you say "they," that's distributions of  
24 equity or dividends, correct?

25 A. That is correct.

1           Q. All right. Okay. Then you've got  
2 Mr. Mueller's response later that day, April 5th, 9:47  
3 a.m.. Mr. Mueller -- do you see this?

4           A. Yes.

5           Q. Okay. This is a little further up, but it's  
6 on Page 2 of the document. It says, "Okay, thanks for  
7 the explanation. I've owned more than six months so  
8 it'll be qualified dividends according to your e-mail.  
9 However, the IRS site says," and then he quotes from  
10 the IRS site. Do you see that?

11          A. Yes.

12          Q. So then he asks you, "They are qualified  
13 dividends or LTCG?" Do you see that?

14          A. Yes.

15          Q. The LTCG means long-term capital gains?

16          A. Yes.

17          Q. All right. And he says, "Most were payments  
18 of my AMEX bill, which essentially were a  
19 distribution." Do you see that?

20          A. Yes.

21          Q. Does that -- are you familiar with QuickBooks  
22 where -- are you familiar with QuickBooks entries of  
23 Policy Services that indicate payments from Policy  
24 Services to AMEX for a card in the name of  
25 Mr. Mueller?

1           A. I don't recall that, but he's bringing it up.

2           Q. And he's saying that these are essentially a  
3 distribution. Do you see that?

4           A. Okay.

5           Q. Is that -- that's what the e-mail says, which  
6 essentially are a distribution?

7           A. Yes.

8           Q. Okay. Mr. Mueller says, "I am getting more  
9 and more confused. Or are they a loan which stays  
10 internal pending profits? Which might happen this tax  
11 year. Again confused." So this -- how -- whether or  
12 not -- the determination of whether or not these --  
13 the payments of Mr. Mueller's AMEX bill are a  
14 distribution or a loan, that -- does that have any  
15 impact on Policy Services' tax returns?

16          A. Not really. But if Policy Services had a  
17 profit this year, which he's indicating it might, then  
18 it could have been a taxable -- it could have been a  
19 distribution of previously taxed income because it  
20 would have been taxed in that current year and not  
21 taxable to him as a dividend.

22          Q. Okay. Let's explain that. So is that  
23 another way of saying that he could treat it as a loan  
24 temporarily until they are tax -- until there is  
25 profits and then reduce his profits from the loan

1 amount?

2 MS. WARDEN: Objection; leading and  
3 vague.

4 Q. (BY MR. HULINGS) So let me -- do you  
5 understand that question?

6 A. I'm not sure.

7 Q. Not sure how the taxes work. That's  
8 basically it. Trying to get at how do you do this?

9 A. So I think -- I think what you're trying to  
10 ask is if there was a profit that created enough  
11 income to exceed the prior year losses, then he would  
12 have had basis, and he is allowed to take  
13 distributions without having to pick them up as  
14 taxable income.

15 Q. So how would you treat a loan from the  
16 corporation on the year that he had sufficient basis?

17 A. It wouldn't be a loan. It would be a  
18 distribution.

19 Q. And so it would be taxed that year when there  
20 was sufficient basis?

21 A. So what would happen is the income from the  
22 company that year would be taxable to him, his pro  
23 rata portion, and then his distribution reduces his  
24 basis. So he was at -- if he was at a negative  
25 500,000, let's say, and his distributable income was

1       600,000 for the year, he would have had a hundred  
2 thousand of basis, which he could distribute up to the  
3 hundred thousand without any subsequent tax  
4 consequence.

5       **Q.     Okay.   Needless to say, Mr. Mueller, he says**  
6 **several times that he was confused, correct?**

7       A.     Okay.

8       **Q.     Well, and -- and you're -- you're giving**  
9 **Mr. Mueller advice on how he should treat payments to**  
10 **him on his personal income taxes?**

11           **MS. WARDEN:** Objection; leading.

12           **Q.     (BY MR. HULINGS) Are you giving him advice --**  
13 **let me rephrase it. We asked this two different ways.**  
14 **Okay? Mr. Mueller is asking -- is it correct to say**  
15 **Mr. Mueller is asking for your advice as to how he**  
16 **should treat payments from Policy Services to him on**  
17 **his personal income tax returns?**

18           **MS. WARDEN:** Same objection.

19           A.     I would say no. I think he's asking -- I --  
20 I think the confusion is coming in in the terminology  
21 of distributions and dividends, and because we didn't  
22 have the accounting knowledge at this time that we're  
23 having this discussion on what the profitability or  
24 loss for Policy Services was, I'm trying to explain to  
25 him how the different situations are handled from a

1 some fairly complex issues here, and I think we have  
2 different definitions of what counts as leading,  
3 particularly with a third-party witness that has  
4 signed a declaration requested by the SEC so as far as  
5 I'm concerned, I'm considering this witness hostile  
6 enough that I can ask any questions. It's not a --  
7 that's a legal term. It's not a reflection on you,  
8 Mr. Abramson.

9 A. Understood.

10 MR. HULINGS: For the record, I don't  
11 think any of these questions are actually leading, and  
12 I think I'm entitled to lead, but to avoid unnecessary  
13 pointless and --

14 MS. WARDEN: I disagree for the record.

15 (Speaking simultaneously.)

16 MR. HULINGS: -- I will ask questions.

17 Q. (BY MR. HULINGS) There may be a lot of  
18 different versions of these questions, Mr. Abramson,  
19 just to avoid these baseless objections so bear with  
20 me.

21 A. Okay.

22 Q. All right. Let's go up one more. So we've  
23 got an e-mail from you, Mr. Mueller dated April 5th,  
24 2016, at 3:08 p.m. See that?

25 A. Yes.

1           Q. This is a response to the previous e-mail we  
2 just discussed; is that right?

3           A. Correct.

4           Q. The first paragraph you said that, "A  
5 qualified dividend is treated the same as a long-term  
6 capital gain and then it's taxed at 15 to 20 percent  
7 depending on your income level?

8           A. Correct.

9           Q. All right. Next paragraph says, "If you  
10 treat these as loans, they are not currently taxable  
11 as they would be considered loans to you from the  
12 corporation. In years that there are profits (and you  
13 have positive basis), you can then treat the loans as  
14 distributions of income and not pay tax a second time  
15 on the funds."

16           A. Okay.

17           Q. So is that -- do you standby that description  
18 of how Mr. Mueller could treat payments from Policy  
19 Services to him or for his -- for his -- or for --

20           **MS. WARDEN:** Objection -- sorry.

21           **MR. HULINGS:** I didn't hear the  
22 objection.

23           **MS. WARDEN:** My objection is vague as  
24 to "standby."

25           Q. (BY MR. HULINGS) You understand what I mean

1 by "standby"?

2 A. Are you saying that do I agree that that's  
3 something I'm asking?

4 Q. No, no. Let me rephrase. All right. So  
5 this -- this second paragraph of this e-mail that  
6 starts with, "If you treat these as loans" --

7 A. Yes.

8 Q. Do you consider that paragraph to be an  
9 accurate statement of the tax laws in general  
10 accounting principles?

11 A. Yes.

12 Q. Okay. And so they're -- are you telling  
13 Mr. Mueller that he can treat payments from Policy  
14 Services for his personal AMEX bill as a loan in that  
15 current tax year?

16 MS. TULLY: Objection; mischaracterizes  
17 the evidence; speculation.

18 MS. WARDEN: Same objection. The e-mail  
19 speaks for itself.

20 Q. (BY MR. HULINGS) You can answer.

21 A. I'm sorry. Just restate it again.

22 Q. All right. No, you know what, let's -- so  
23 let me ask -- let me ask it this way. To your  
24 knowledge, was there anything improper under the tax  
25 laws and accounting principles by Mr. Mueller treating

1           **payments by Policy Services of his American Express  
2           bill as a loan from Policy Services in tax year 2015?**

3           **MS. WARDEN:** Objection; asks for a legal  
4 conclusion; vague.

5           **MS. TULLY:** Same objections.

6           A. My opinion, no.

7           **Q. (BY MR. HULINGS) Is it in your experience  
8 common for sole owners of LLCs or S-Corp.'s to take  
9 loans from those entities?**

10          **MS. TULLY:** Objection; speculation;  
11 vague as to "common."

12          **MS. WARDEN:** Same objection.

13          A. Yes, it occurs.

14          **Q. (BY MR. HULINGS) Is there anything -- does it  
15 violate accounting principles for an owner of a  
16 company to take a loan from his company?**

17          **MS. TULLY:** Objection; speculation;  
18 incomplete hypothetical.

19          A. As long as it's documented and interest is  
20 paid on the loan and the loan has terms for repayment,  
21 no.

22          **Q. (BY MR. HULINGS) All right. Okay. A little  
23 further up, you've got -- let me actually stop on  
24 that. When it says, "As long as the loan is  
25 documented," to comply with accounting principles, how**

1 as loans they are not currently taxable." Do you see  
2 that?

3 A. Yes.

4 Q. Did you ever tell Mr. Mueller that if he  
5 treats these payments as loans, he is required to  
6 prepare a note?

7 A. I don't know that loans ever occurred while I  
8 was working on the account, so, no, I probably did  
9 not.

10 Q. So to clarify, you don't recall ever telling  
11 Mr. Mueller that a note was required for a loan?

12 MS. WARDEN: Objection; asked and  
13 answered.

14 A. No. Because to the best of my knowledge,  
15 there was never a loan in place.

16 Q. (BY MR. HULINGS) Okay. So let's go a little  
17 further. April 5th, 2016, an e-mail from Mr. Mueller  
18 to you at 1:15 p.m. Do you see that?

19 A. Yes.

20 Q. And obviously there are different time zones  
21 here, so we don't know how -- I mean, we don't know --  
22 the -- the e-mails don't reflect the time zone so --

23 A. That's okay.

24 Q. All right. So Mr. Mueller then says, "Can we  
25 treat 176,930 as long-term capital gains and the rest

1 as loans. Which would be easiest?" Do you see that?

2 A. Yes.

3 Q. And then you respond. "We can treat it as  
4 such when the returns are prepared." What is your  
5 understanding of what you meant when you said "as  
6 such"?

7 A. In other words, he wants to take 176 plus as  
8 dividends and the rest as loans.

9 Q. What you're telling him -- what you're  
10 telling him is that he can treat it as long term  
11 capital gains and the rest as loans when the returns  
12 are prepared; is that a fair summary?

13 MS. WARDEN: Objection; mischaracterizes  
14 the evidence and leading.

15 A. Yes.

16 Q. (BY MR. HULINGS) Okay. All right. And it  
17 says -- next sentence says, "There should have been a  
18 1099-div issued to you from the dividends, which is  
19 due to the IRS February 29, 2016." Do you see that?

20 A. Yes.

21 Q. But then you say, "Since it is not deductible  
22 and you are reporting the income I don't see a big  
23 issue with it, but that is what should have happened."  
24 See that?

25 A. Yes.

1       **accounting and tax preparation services to Mr. Mueller**  
2       **and his affiliated companies?**

3           A. Well, partly because with their split, I knew  
4 I need to spend the time on Mr. Hagan's, along with  
5 other new clients that I picked up during that tax  
6 period. So I just didn't have the time to handle  
7 Mr. Mueller's.

8           Q. **And were there -- is that the only reason or**  
9 **any other reasons?**

10              MS. WARDEN: Objection; leading.

11           A. Well -- well, with -- with the split, I  
12 didn't want -- I felt it was a conflict to do both.

13           Q. **(BY MR. HULINGS) Was there anything in -- did**  
14 **you discontinue working with Mr. Mueller because you**  
15 **thought he was doing anything improper?**

16           A. No.

17              MS. WARDEN: Objection; leading.

18           A. No.

19           Q. **(BY MR. HULINGS) Okay. Let me try to think**  
20 **how I can rephrase that question to make it less**  
21 **leading. I don't think it was leading. How about --**  
22 **well, I think you've answered it. I think we're fine.**

23              Just to clear it up for the record, did you  
24 discontinue working with Mr. Mueller because you  
25 thought he was doing anything improper?

1           A.     No.

2           Q.     All right. After -- a little further on, you  
3 say, "We wish to remind you that your 2015 federal  
4 corporate income tax returns are due by September 15,  
5 2016." That's in the second-to-last paragraph of the  
6 letter. Do you see that?

7           A.     Correct.

8           Q.     That basically gives Mr. Mueller two months  
9 to find a new CPA; is that about right?

10          A.     Correct.

11          Q.     Is that enough time in your experience to --  
12 for a new CPA to review documents and prepare returns?

13                 **MS. WARDEN:** Objection; vague.

14          A.     I don't know. I've taken on new clients with  
15 shorter periods than that.

16          Q.     (BY MR. HULINGS) So in your experience, you  
17 think you could have prepared a tax return in the two  
18 months that you were giving a client in this case?

19                 **MS. WARDEN:** Objection; speculative.

20          A.     Depending on when the records came in, yes.

21          Q.     (BY MR. HULINGS) All right.

22          A.     At this time I don't think the records were  
23 available.

24          Q.     Did you have any -- are you aware of who  
25 Mr. Mueller retained?

1           A. When you say taking revenue funds, what do  
2 you mean by that?

3           Q. Let me ask it another way. Did you ever tell  
4 Mr. Mueller that he could not treat for accounting  
5 purposes money provided by investors as revenue Policy  
6 Services?

7           A. No.

8           Q. In your opinion -- well, you filed the tax  
9 returns for those years, correct?

10          A. Correct.

11          Q. Would you have -- if there was something  
12 inappropriate, illegal, or contrary to accounting  
13 principles in -- in that practice of treating account  
14 -- some of the money provided by investors as revenue  
15 to Policy Services, would you have filed the tax  
16 return as it was written?

17           MS. WARDEN: Objection; vague; compound;  
18 speculative; asks for a legal conclusion.

19          Q. (BY MR. HULINGS) So let me see if I can  
20 address that objection. It doesn't ask for a legal  
21 conclusion because it just asks you whether you would  
22 have filed something. It's not compound, but let me  
23 ask it this way: When you file the tax return for  
24 Policy Services, was there anything -- was there any  
25 -- when you filed the tax returns for Policy Services,

1       **was there any information included on that tax return**  
2       **that you thought was inaccurate?**

3       A.     No.

4       Q.     **Was there any information that you thought**  
5       **did not comply with accounting principles?**

6       A.     No.

7       Q.     **Is it part of your job to make sure that the**  
8       **tax returns filed by Policy Services complied with the**  
9       **tax laws?**

10      A.     Yes.

11      Q.     **Is it part of your job to ensure that the tax**  
12      **returns filed by Policy Services complied with**  
13      **generally accepted accounting principles?**

14      A.     No.

15      Q.     **Was it your job to advise the client about**  
16      **generally accepted accounting principles when**  
17      **appropriate for purposes of preparing tax returns?**

18      A.     Well, in preparing tax returns, they were  
19      filed, I believe, on the cash basis of accounting,  
20      which is not generally accepted accounting principles  
21      so --

22      Q.     All right.

23      A.     -- based on your question, I would say no.

24      Q.     Thank you -- thank you for the clarification.

25      A.     Sure.

1           Q.    But if there was -- if you identify  
2 information in Policy Services books and records that  
3 you thought was not reasonable, it was your practice  
4 to inform your clients of that fact; is that right?

5           MS. WARDEN: Objection; vague as to  
6 reasonable; speculative.

7           Q.    (BY MR. HULINGS) You used the word reasonable  
8 earlier in your testimony, correct?

9           A.    Yes.

10          Q.    So you understand what I -- what I am  
11 referring to when I -- I say that you -- you  
12 considered it part of your professional obligations to  
13 inform your clients when there was something in their  
14 books and records that you considered to not be  
15 reasonable?

16          A.    Correct.

17          Q.    And in the -- in preparing Policy Services  
18 tax returns, you, on occasion, informed Mr. Mueller  
19 and Mr. Hagan and Ms. Acker of certain entries that  
20 you considered to not be reasonable?

21          A.    Correct.

22          Q.    And to your memory, did they ever refuse to  
23 accept your advice?

24          A.    Not that I remember.

25          MR. HULINGS: All right. I'm going to

1           A. I don't remember if they ended up cashing out  
2 the policy to provide funds to -- for the refund or  
3 whether they used funds from either other funds that  
4 they were holding to pay future premiums or other  
5 investors' money. I don't know where the funds came  
6 from.

7           Q. So one of the possibilities is that -- so let  
8 me put it this way: When investor invests funds in  
9 Policy Services, those funds aren't escrowed in a  
10 separate bank account?

11          A. No.

12          Q. Those funds are combined with the funds of  
13 other investors and then spent in ways we've  
14 discussed --

15           **MS. WARDEN:** Objection -- sorry.

16           **MS. TULLY:** Objection; speculation.

17           **MS. WARDEN:** And objection; misstates  
18 testimony.

19          Q. (BY MS. WARDEN) It's just a question. Does  
20 it -- when investor -- when an investor deposits money  
21 into Policy Services, it doesn't -- it's not escrowed  
22 into a particular bank account?

23          A. No. It's effectively put into a pool of  
24 funds.

25          Q. With other investor funds?

1           A. Yes.

2           Q. And that money is, in your experience in  
3 working with Policy Services and reviewing the  
4 QuickBooks records and other documents, that money is  
5 spent in various ways that we've discussed today?

6           A. Yes.

7           Q. So you ever hear the phrase money is  
8 fungible?

9           A. As long as they are tracking how much is due  
10 to each investor, which they were, yes.

11          Q. So would there be anything that violates the  
12 -- it would be -- so these -- the funds who -- the  
13 payment to the investor that asks for their money back  
14 could have been made from new investor funds, correct?

15           MS. WARDEN: Objection; speculative;  
16 vague.

17          A. In other words, a new investor could have  
18 effectively purchased the policy that the exiting  
19 investor was invested in.

20          Q. (BY MR. HULINGS) Could Policy Services have  
21 made a payment from a bank account where other  
22 investor money was pooled to repay that investment and  
23 -- and be compliant with accounting standards?

24           MS. WARDEN: Objection; speculative;  
25 vague.

1           A. Yes.

2           Q. (BY MR. HULINGS) So when you learned that  
3         Policy Services had returned that investor's  
4         investment, did you tell Mr. Mueller or Mr. Hagan that  
5         they were doing anything wrong?

6           A. No.

7           Q. And you mentioned earlier that none of these  
8         policies matured during the time that you were working  
9         with Policy Services, correct?

10          A. That's my recollection, yes.

11          Q. So that leaves, as the source of the funds to  
12         repay this investor, funds from new investors,  
13         correct?

14                   MS. WARDEN: Objection; misstates  
15         testimony.

16                   MS. TULLY: Speculation.

17                   MS. WARDEN: Leading.

18          Q. (BY MR. HULINGS) What other possible source  
19         of funds could have been used to repay this investor  
20         if none of the policies had matured, other than new  
21         investor funds?

22                   MS. TULLY: Objection; speculation.

23          A. Well, part of the funds that were pooled from  
24         prior investors were being maintained by Policy  
25         Services for future expenses. It could have come out

1 of that pool. It could have -- they could have sold  
2 the policy that the investor was invested in. I -- I  
3 don't recollect whether that was done or not. Or it  
4 came from money that other investors placed with the  
5 company.

6 Q. (BY MR. HULINGS) Okay.

7 A. I mean, those were the only three sources of  
8 funds from -- for anything.

9 Q. And you didn't tell Mr. Mueller or Mr. Hagan  
10 that there was anything inappropriate when using any  
11 one of those three sources of funds to repay this  
12 investor?

13 A. No.

14 Q. All right. Okay. You mentioned earlier that  
15 you didn't verify the data that related to the  
16 expenses in the Deeproot QuickBooks entries; is that  
17 right?

18 A. Right.

19 Q. When you say "verify," what do you mean by  
20 that?

21 A. So if you're doing an audit or a review of  
22 the books, you are applying some kind of statistical  
23 or sampling or actual inspection of records, looking  
24 at contracts, looking at various documents to -- to  
25 make sure that the transactions are accurate. All I

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF TEXAS  
3                   SAN ANTONIO DIVISION

4                   SECURITIES AND EXCHANGE         )  
5                   COMMISSION,                         )  
6   )  
7                   Plaintiff,                         )  
8   )  
9                   -against-                         )  
10   )  
11                   ROBERT J. MUELLER,                 )  
12                   DEEPROOT FUNDS, LLC                 )  
13                   (a/k/a dprt Funds,                 )  
14                   LLC), AND POLICY                     )  
15                   SERVICES, INC.,                     )  
16   )  
17                   Defendants.                         )  
18   )  
19                   -and-                                 )                   CIVIL ACTION NO.  
20   )                   5:21-cv-785-XR  
21                   DEEPROOT TECH LLC,                 )  
22                   DEEPROOT PINBALL LLC,                 )  
23                   DEEPROOT STUDIOS LLC,                 )  
24                   DEEPROOT SPORTS &                 )  
25                   ENTERTAINMENT LLC,                 )  
                    DEEPROOT RE 12621                     )  
                    SILICON DR LLC, AND                 )  
                    ROBERT J. MUELLER,                 )  
                    JEFFREY L. MUELLER, AND                 )  
                    BELINDA G. BREEN, AS                 )  
                    CO-TRUSTEES OF THE MB                 )  
                    HALE OHANA REVOCABLE                 )  
                    TRUST,                                 )  
                    Relief Defendants.                 )

21                   THE STATE OF TEXAS :  
22                   COUNTY OF HARRIS :

23                   I, HEATHER L. GARZA, a Certified Shorthand  
24                   Reporter in and for the State of Texas, do hereby  
25                   certify that the facts as stated by me in the caption

1 hereto are true; that the above and foregoing answers  
2 of the witness, KEN ABRAMSON, to the interrogatories  
3 as indicated were made before me by the said witness  
4 after being first remotely duly sworn to testify the  
5 truth, and same were reduced to typewriting under my  
6 direction; that the above and foregoing deposition as  
7 set forth in typewriting is a full, true, and correct  
8 transcript of the proceedings had at the time of  
9 taking of said deposition.

10

11 I further certify that I am not, in any  
12 capacity, a regular employee of the party in whose  
13 behalf this deposition is taken, nor in the regular  
14 employ of his attorney; and I certify that I am not  
15 interested in the cause, nor of kin or counsel to  
16 either of the parties;

17

18 That the amount of time used by each party at  
19 the deposition is as follows:

20 MR. HULINGS - 03:50:19

21 MS. TULLY - 00:00:00

22 MS. WARDEN - 00:21:37

23

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on  
this, the 6TH day of JULY, 2023.

24

25

1  
2 Heather L. Garza  
3 HEATHER L. GARZA, CSR, RPR, CRR  
4 Certification No.: 8262  
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